

REMARKS

A written requirement for an election of species was sent out by the United States Patent and Trademark Office on January 30, 2002. Due to the confusing nature of the written restriction, a telephone call was made to the Examiner on April 25, 2002 to clarify the restriction.

In the telephone conference of April 25, 2002 the Examiner set forth a Restriction Requirement and identified two different sets of species. The Examiner required that Applicants elect a particular species from each set. In particular, the Examiner required an election between the following species:

1. A cylindrical filter having a support layer, a pre-filtration layer and a precision filter layer as shown in Figure 1a; or
2. A cylindrical filter having a pre-filtration layer and a precision filter layer as shown in Figure 1b.

In addition to the above, the Examiner required an election of a particular type of fiber of the nonwoven fabric from:

- a. Single component fibers; or
- b. Multi component (or composite) fibers.

Applicants traverse the present restriction requirement because the Examiner did not meet the following two criteria necessary for a proper restriction requirement between patentably distinct inventions:

- (1) The inventions must be independent or distinct as claimed; and
- (2) *There must be a serious burden on the Examiner if restriction is required.*

MPEP § 803 (emphasis provided). Specifically, the Examiner did not meet the second criterion listed above, i.e., the Examiner did not show that there would be a serious burden in examining the present claims.

It is not enough that the Examiner shows that the inventions are independent or distinct as claimed. The Examiner must also establish reasons for insisting upon restriction by showing appropriate explanation regarding one of the following:

- (1) a showing that each distinct invention has attained recognition in the art as a separate subject matter and separate field of search;
- (2) the independent and distinct inventions have a separate status in the art which may be shown by citing patents which are evidence of such separate status; or
- (3) a different field of search is required for each independent invention.

MPEP § 808.02.

The Examiner has failed to show that it would be a serious burden to examine together the inventions recited in the present claims. In particular, the Examiner has failed to indicate any separate classifications, separate status or different field of search required to examine each of the independent and distinct inventions. A restriction requirement is improper if the Examiner cannot show such a serious burden in examining the independent inventions together.

Moreover, Applicants submit that claim 2 of U.S. Patent No. 5,503,745 recites lower and higher melting point micro fine fibers composed of a mixture of single component fibers or composite (conjugated) fibers, respectfully. Although the '745 patent in no way is prior art against the claims of the present application, the '745 patent does indicate that it would not be an undue burden for the Examiner to examine all of the claims together. Again, the Examiner has not shown that it would be a burden, much less a serious burden, to review the claims together.

Finally, Applicants remind the Examiner that a Restriction Requirement would increase Applicants costs involved in prosecuting two or more applications, payment of issue fees, maintenance fees, etc. which would be unduly burdensome to the Applicants. Therefore, Applicants respectfully request reconsideration of the Restriction Requirement imposed by the Examiner.

The Examiner is reminded that Applicants are entitled to consideration of claims of additional species written in independent form or otherwise include all recitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

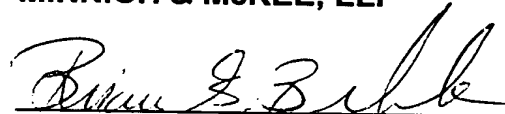
Although Applicants traverse the restriction, in order to expedite prosecution of the application, Applicants elect a cylindrical filter having a pre-filtration layers and precision filtration layer (Figure 1b) which concern claims 1-36. Also, Applicants elect single components fibers which are related to the cylindrical filter shown in Figure 1b in claims 2, 6, 17, 18, 25 and 26 (claim 41 is also concerned with a single component fiber but the filter of claim 41 is shown in Figure 1a). If the Examiner does not find the election sufficient, Applicants respectfully request a revised election requirement specifying possible sets of claims to be elected.

Should any issues remain, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

**FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP**

DATED: May 26, 2002


Richard J. Minnich, Reg. No. 24,175
Brian G. Bembenick, Reg. No. 41,463
1100 Superior Avenue
Seventh Floor
Cleveland, Ohio 44114-2518
Tel: (216) 861-5582
Fax: (216) 241-1666

N:\KAW20089\3AVAMD0545A.doc